IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04/04/2003

CORAM

THE HON'BLE MR.JUSTICE P.D. DINAKARAN

Writ Petition No.6291 of 1998

Jegajothi .. Petitioner

-Vs-

The Manager
Local Office
Employees State Insurance Corporation
164 N, North Beach Road
Tuticorin 628 001. .. Respondent

Petition under Article 226 of the Constitution of India praying for a writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr.A. Ramesh
For Mr.P. Peppin Fernando

For Respondent : Mr.G. Bharadwaj

:O R D E R

The petitioner seeks a writ of Certiorarified Mandamus calling for the records relating to the Order No.57-283538/DP/TUT/96 dated 13.3.19 98 and quash the same and directing the respondent to pay the arrears of dependant benefit amount with interest at the rate of 12% from 22 .12.1995 till the date of payment and to pay the monthly benefit amount to her.

2. Admittedly, the petitioner is the mother of one Suresh Kumar, who died on 22.12.1995 leaving his wife Annapoorani, father, mother and sister.

3. As per Rule 58(1)(A) of ESI (Central) Rules, 1950, a widow and children of the deceased employee have got preferential entitlement to the benefit of the insurance scheme under the provisions of the Employees' State Insurance Act, 1948 (hereinafter referred to as the "Act"). Only in the absence of widow and children, the benefit is payable to other dependants, viz. the parents.

4. Section 60 of the Act bars any transfer of right to receive any amount of any benefit under the Act, which reads as follows.
"Section 60:

Benefit not assignable or attachable
(1) The right to receive any payment of any benefit under this Act shall not be transferable or assignable.
(2) No cash benefit payable under this Act shall be liable to attachment or sale in execution of any decree or order of any Court."

5. While so, the Manager of the Local Office of the ESI Corporation at Tuticorin, by his letter dated 22.1.1998, permitted Annapoorani, the wife of Sureshkumar, to receive the amount through her father in law or mother in law, viz. the parents of Suresh Kumar. However, by the subsequent letter dated 13.3.1998, Annapoorani, the wife of Sureshkumar, was informed that no authorisation to any third party could be entertained, presumably in view of the bar under Section 60 of the Act. Hence, the mother of Suresh Kumar has preferred the above writ petition challenging the proceedings dated 13.3.1998 based on the earlier proceedings dated 22.1.1998 by the Manager of Local Office of the ESI Corporation.

6. I am unable to appreciate either the claim of the petitioner or the contention of the learned counsel for the petitioner in this regard for two reasons, viz.
(i) the Manager, Local Office is not a competent authority to permit Annapoorani, the wife of Sureshkumar, to receive the benefits through her father in law or mother in law; and
(ii) the petitioner is not entitled to claim any right based on the proceedings dated 22.1.1998, as the same is contrary to Section 60 of the Act, which bars any transfer of benefits conferred under the provisions of the Act, as it is a settled law that there cannot be any estoppel against the statute.

The writ petition fails and therefore, the same is dismissed. No costs. Consequently, WPMP No.9711 of 1998 is also dismissed.

Index : Yes
Internet : Yes

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To

The Manager, Local Office
Employees State Insurance Corporation
164 N, North Beach Road
Tuticorin 628 001.

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